

**DEFENDANT'S REQUESTED OPENING INSTRUCTION NO. 1:
JUSTICE WITHOUT DISCRIMINATION**

At the end of this case, along with the other detailed instructions that apply to the sentencing decision, I will include the following instruction:

In your consideration of whether to impose the death sentence or life imprisonment without the possibility of release, you must not consider the race, color, religious beliefs, national origin, or sex of either the defendant or the victims. You are not to return a sentence of death unless you would return a sentence of death for the crime in question without regard to the race, color, religious beliefs, national origin, or sex of either the defendant or any victim.

When it passed the federal death penalty statute, Congress considered the instruction I have just read to you so important that it created a special procedure. When you retire to deliberate at the end of this sentencing hearing, you will be given a form that is unlike anything else federal juries are ever asked to fill out. It is a certificate, to be signed by each one of you, that promises the defendant, the government, me, and the people of the United States that you actually followed the instruction I have just read to you.

Specifically, the certificate states that “consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching [any juror’s] individual decision.” The certificate also states that “each individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or any victim might have been.”

As I said, you won’t get to this form until the end of the sentencing process. But you need to know about it now so that you can keep it in mind throughout this hearing

while you listen to the evidence.

This certificate is not to be signed lightly. Congress included it in this process in order to ensure that each of you would stop and think deeply about how you make your sentencing decision. Of course, Congress wanted to make sure that no one is sentenced to death because of actual racial, ethnic, religious or gender bias. But this certificate asks more than that. It also asks you to reflect on how you look at each of the people involved in this case, and on how you respond to what you seen and learn about them.

Human beings have a natural tendency to identify with, and to respond to, people like themselves. It's just the way most people are. But the law requires more of jurors who are entrusted with making a life and death decision. It requires that each of you look deep inside to see if the way you are responding to the evidence and testimony of various witnesses or parties differs depending on the religious beliefs, ethnicity, or national origins of the people involved. And if you are responding differently—more able, for example, to see the point of view or understand the emotions of someone whose background is more like your own---the law requires that you think through your responses again, imagining this time that everyone's backgrounds were reversed from what they actually are.

That is a way of checking yourself, and in that way making sure that your sentencing decision—whatever it may be—is truly free of any influence of religious beliefs, national origin, race, ethnicity or gender. And if in the end you cannot honestly certify that your decision would have been the same regardless of the religious beliefs, national origin, race, ethnicity or gender of either the defendant or any of the victims, you

may not sign the Certificate about which I have instructed you.

18 U.S.C. § 3593(f).